

SENATE RECORD VOTE ANALYSIS

105th Congress
2nd Session

Vote No. 251

July 30, 1998, 8:00 p.m.
Page S-9392 Temp. Record

DEFENSE APPROPRIATIONS/Funding & Use of Military Force

SUBJECT: Department of Defense Appropriations Bill for fiscal year 1999 . . . S. 2132. Stevens motion to table the Durbin amendment No. 3465.

ACTION: MOTION TO TABLE AGREED TO, 84-15

SYNOPSIS: As reported, S. 2132, the Department of Defense Appropriations Bill for fiscal year 1999, will appropriate \$250.5 billion for the military functions of the Department of Defense for fiscal year (FY) 1999 and \$2.810 billion more than provided in FY 1998.

The Durbin amendment would add the following: "No funds appropriated or otherwise made available by this Act may be used to initiate or conduct offensive military operations by United States Armed Forces except in accordance with Article I, Section 8 of the Constitution, which vests in Congress the power to declare war and take certain other related actions."

Debate was limited by unanimous consent. After debate, Senator Stevens moved to table the Durbin amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

There has always been some tension between the Executive and Legislative Branches on war powers. The Library of Congress has put together a list of 234 instances between 1798 and 1993 in which the United States used its Armed Forces abroad in situations of conflict or potential conflict for other than normal peacetime purposes. Only 5 of those instances were declared wars, though many of them involved very large commitments of military power that might be considered undeclared wars. Most importantly for this debate, the United States became involved in many of those conflicts, from the earliest days of this republic to modern times, due to presidential rather than congressional actions. In other words, our colleagues' assertion that the President's use of the military has been sharply limited until very recently just is not supported by the facts. Still, that does not necessarily mean that we are against

(See other side)

YEAS (84)				NAYS (15)		NOT VOTING (1)	
Republican (52 or 96%)		Democrats (32 or 71%)		Republicans (2 or 4%)	Democrats (13 or 29%)	Republicans (1)	Democrats (0)
Abraham	Hatch	Akaka	Kerry	Hutchison	Biden	Helms- ^{3AY}	
Allard	Hutchinson	Baucus	Kohl	Specter	Bingaman		
Ashcroft	Inhofe	Breaux	Landrieu		Boxer		
Bennett	Jeffords	Bryan	Lautenberg		Byrd		
Bond	Kempthorne	Bumpers	Leahy		Durbin		
Brownback	Kyl	Cleland	Levin		Feingold		
Burns	Lott	Conrad	Lieberman		Harkin		
Campbell	Lugar	Daschle	Mikulski		Hollings		
Chafee	Mack	Dodd	Moynihan		Johnson		
Coats	McCain	Dorgan	Murray		Kennedy		
Cochran	McConnell	Feinstein	Reed		Moseley-Braun		
Collins	Murkowski	Ford	Reid		Sarbanes		
Coverdell	Nickles	Glenn	Robb		Wellstone		
Craig	Roberts	Graham	Rockefeller				
D'Amato	Roth	Inouye	Torricelli				
DeWine	Santorum	Kerrey	Wyden				
Domenici	Sessions						
Enzi	Shelby						
Faircloth	Smith, Bob						
Frist	Smith, Gordon						
Gorton	Snowe						
Gramm	Stevens						
Grams	Thomas						
Grassley	Thompson						
Gregg	Thurmond						
Hagel	Warner						

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

putting some limits on the President's use of power without congressional approval, nor does it mean that we disagree that some Presidents, past and present, have overstepped their authority. However, we agree that the Durbin amendment would just go too far in restricting presidential authority. It would flatly prohibit the President from taking any offensive military actions without express authorization from Congress. Additionally, even if this amendment were not clearly too sweeping, it would be a mistake to make a decision of such consequence with so little forethought. We are certainly willing to look at this issue more closely. We support having hearings so that all constitutional, historical, and practical aspects of this issue can be carefully and thoroughly explored. Such an examination, of course, is not possible when spending a few minutes of debate on an amendment to an appropriations bill. Regardless of any merits that this amendment may have, it would be utterly foolhardy to approve it or any amendment of similar scope without any real understanding of the effects it would have. Therefore, we strongly urge our colleagues to table this amendment.

Those opposing the motion to table contended:

Constitutionally, almost all of the war-making powers are vested in Congress. The Founding Fathers wanted to make certain that a warmongering President could not squander the wealth and endanger the security of the Nation by sending troops into conflicts around the globe, as so many kings had done to their countries throughout history. The President was given control over the command of the military, but that control was intended to be ministerial. In Federalist No. 69, Alexander Hamilton, who was a strong champion of Executive power, wrote that the President's power as Commander in Chief would be "much inferior" to that of the British King, amounting to "nothing more than the supreme command and direction of the military and naval forces." Original intent can be further seen by the fact that Congress retained for itself the right to grant letters of "marque and reprisal." Such letters were essentially permission slips that Congress gave to the bearers of those slips to seize the property of other states. ("Marque" refers to crossing borders; "reprisals" refer to takings.) This type of official piracy to redress grievances was a common form of limited military action short of war at the time the Constitution was written. Thus, this provision shows that the Founding Fathers intended to reserve for Congress the right to say when the military would be used in limited actions that fell short of war.

In recent years, as a result of the Cold War, the exercise of Congress' constitutional powers shifted to the President. The rationale (which we always found questionable) was that with a dangerous enemy that had nuclear missiles that could destroy the United States with only a few minutes' notice we needed to have war-making powers exercised by one person so that they could be exercised quickly and decisively. With the demise of the Soviet Union, that rationale is gone, yet first former President Bush, and now President Clinton, have continued to assert that they have the right to use military force without congressional authorization. Original intent has been reversed--now, as in the Persian Gulf War, Congress is almost in the role of performing a ministerial function of declaring war when it believes a military action by the President has risen to the level that it should be defined as a war. The Durbin amendment would correct this imbalance. The President has threatened to veto this bill if the Durbin amendment is passed. That is his right. However, we will not allow a veto threat to dissuade us from doing what we believe is right constitutionally. We thus oppose the motion to table.